
HOUSE BILL 3047

State of Washington 59th Legislature 2006 Regular Session

By Representatives Upthegrove and Orcutt

Read first time 01/18/2006. Referred to Committee on Finance.

1 AN ACT Relating to tangible personal property and services included
2 in the definition of retail sale; reenacting and amending RCW
3 82.04.050; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101 are
6 each reenacted and amended to read as follows:

7 (1) "Sale at retail" or "retail sale" means every sale of tangible
8 personal property (including articles produced, fabricated, or
9 imprinted) to all persons irrespective of the nature of their business
10 and including, among others, without limiting the scope hereof, persons
11 who install, repair, clean, alter, improve, construct, or decorate real
12 or personal property of or for consumers other than a sale to a person
13 who presents a resale certificate under RCW 82.04.470 and who:

14 (a) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person, but a purchase for the purpose of resale by a regional
17 transit authority under RCW 81.112.300 is not a sale for resale; or

18 (b) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (c) Purchases for the purpose of consuming the property purchased
5 in producing for sale a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

10 (d) Purchases for the purpose of consuming the property purchased
11 in producing ferrosilicon which is subsequently used in producing
12 magnesium for sale, if the primary purpose of such property is to
13 create a chemical reaction directly through contact with an ingredient
14 of ferrosilicon; (~~(for)~~) or

15 (e) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065. The term shall include every sale of tangible personal
18 property which is used or consumed or to be used or consumed in the
19 performance of any activity classified as a "sale at retail" or "retail
20 sale" even though such property is resold or utilized as provided in
21 (a), (b), (c), (d), or (e) of this subsection following such use. The
22 term also means every sale of tangible personal property to persons
23 engaged in any business which is taxable under RCW 82.04.280 (2) and
24 (7), 82.04.290, and 82.04.2908; or

25 (f) Purchases for the purpose of satisfying the person's
26 obligations under an extended warranty as defined in subsection (7) of
27 this section, if such tangible personal property replaces or becomes an
28 ingredient or component of property covered by the extended warranty
29 without intervening use by such person.

30 (2) The term "sale at retail" or "retail sale" shall include the
31 sale of or charge made for tangible personal property consumed and/or
32 for labor and services rendered in respect to the following:

33 (a) The installing, repairing, cleaning, altering, imprinting, or
34 improving of tangible personal property of or for consumers, including
35 charges made for the mere use of facilities in respect thereto, but
36 excluding charges made for the use of self-service laundry facilities,
37 and also excluding sales of laundry service to nonprofit health care

1 facilities, and excluding services rendered in respect to live animals,
2 birds and insects;

3 (b) The constructing, repairing, decorating, or improving of new or
4 existing buildings or other structures under, upon, or above real
5 property of or for consumers, including the installing or attaching of
6 any article of tangible personal property therein or thereto, whether
7 or not such personal property becomes a part of the realty by virtue of
8 installation, and shall also include the sale of services or charges
9 made for the clearing of land and the moving of earth excepting the
10 mere leveling of land used in commercial farming or agriculture;

11 (c) The charge for labor and services rendered in respect to
12 constructing, repairing, or improving any structure upon, above, or
13 under any real property owned by an owner who conveys the property by
14 title, possession, or any other means to the person performing such
15 construction, repair, or improvement for the purpose of performing such
16 construction, repair, or improvement and the property is then
17 reconveyed by title, possession, or any other means to the original
18 owner;

19 (d) The sale of or charge made for labor and services rendered in
20 respect to the cleaning, fumigating, razing or moving of existing
21 buildings or structures, but shall not include the charge made for
22 janitorial services; and for purposes of this section the term
23 "janitorial services" shall mean those cleaning and caretaking services
24 ordinarily performed by commercial janitor service businesses
25 including, but not limited to, wall and window washing, floor cleaning
26 and waxing, and the cleaning in place of rugs, drapes and upholstery.
27 The term "janitorial services" does not include painting, papering,
28 repairing, furnace or septic tank cleaning, snow removal or
29 sandblasting;

30 (e) The sale of or charge made for labor and services rendered in
31 respect to automobile towing and similar automotive transportation
32 services, but not in respect to those required to report and pay taxes
33 under chapter 82.16 RCW;

34 (f) The sale of and charge made for the furnishing of lodging and
35 all other services by a hotel, rooming house, tourist court, motel,
36 trailer camp, and the granting of any similar license to use real
37 property, as distinguished from the renting or leasing of real
38 property, and it shall be presumed that the occupancy of real property

1 for a continuous period of one month or more constitutes a rental or
2 lease of real property and not a mere license to use or enjoy the same.
3 For the purposes of this subsection, it shall be presumed that the sale
4 of and charge made for the furnishing of lodging for a continuous
5 period of one month or more to a person is a rental or lease of real
6 property and not a mere license to enjoy the same(;

7 ~~(g) The sale of or charge made for tangible personal property,~~
8 ~~labor and services to persons taxable under (a), (b), (c), (d), (e),~~
9 ~~and (f) of this subsection when such sales or charges are for property,~~
10 ~~labor and services which are used or consumed in whole or in part by~~
11 ~~such persons in the performance of any activity defined as a "sale at~~
12 ~~retail" or "retail sale" even though such property, labor and services~~
13 ~~may be resold after such use or consumption. Nothing contained in this~~
14 ~~subsection shall be construed to modify subsection (1) of this section~~
15 ~~and nothing contained in subsection (1) of this section shall be~~
16 ~~construed to modify this subsection)).~~

17 (3) The term "sale at retail" or "retail sale" shall include the
18 sale of or charge made for personal, business, or professional services
19 including amounts designated as interest, rents, fees, admission, and
20 other service emoluments however designated, received by persons
21 engaging in the following business activities:

22 (a) Amusement and recreation services including but not limited to
23 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
24 for sightseeing purposes, and others, when provided to consumers;

25 (b) Abstract, title insurance, and escrow services;

26 (c) Credit bureau services;

27 (d) Automobile parking and storage garage services;

28 (e) Landscape maintenance and horticultural services but excluding
29 (i) horticultural services provided to farmers and (ii) pruning,
30 trimming, repairing, removing, and clearing of trees and brush near
31 electric transmission or distribution lines or equipment, if performed
32 by or at the direction of an electric utility;

33 (f) Service charges associated with tickets to professional
34 sporting events; and

35 (g) The following personal services: Physical fitness services,
36 tanning salon services, tattoo parlor services, steam bath services,
37 turkish bath services, escort services, and dating services.

38 (4)(a) The term shall also include:

1 (i) The renting or leasing of tangible personal property to
2 consumers; and

3 (ii) Providing tangible personal property along with an operator
4 for a fixed or indeterminate period of time. A consideration of this
5 is that the operator is necessary for the tangible personal property to
6 perform as designed. For the purpose of this subsection (4)(a)(ii), an
7 operator must do more than maintain, inspect, or set up the tangible
8 personal property.

9 (b) The term shall not include the renting or leasing of tangible
10 personal property where the lease or rental is for the purpose of
11 sublease or subrent.

12 (5) The term shall also include the providing of telephone service,
13 as defined in RCW 82.04.065, to consumers.

14 (6) The term shall also include the sale of prewritten computer
15 software other than a sale to a person who presents a resale
16 certificate under RCW 82.04.470, regardless of the method of delivery
17 to the end user, but shall not include custom software or the
18 customization of prewritten computer software.

19 (7) The term shall also include the sale of or charge made for an
20 extended warranty to a consumer. For purposes of this subsection,
21 "extended warranty" means an agreement for a specified duration to
22 perform the replacement or repair of tangible personal property at no
23 additional charge or a reduced charge for tangible personal property,
24 labor, or both, or to provide indemnification for the replacement or
25 repair of tangible personal property, based on the occurrence of
26 specified events. The term "extended warranty" does not include an
27 agreement, otherwise meeting the definition of extended warranty in
28 this subsection, if no separate charge is made for the agreement and
29 the value of the agreement is included in the sales price of the
30 tangible personal property covered by the agreement. For purposes of
31 this subsection, "sales price" has the same meaning as in RCW
32 82.08.010.

33 (8) The term shall not include the sale of or charge made for labor
34 and services rendered in respect to the building, repairing, or
35 improving of any street, place, road, highway, easement, right of way,
36 mass public transportation terminal or parking facility, bridge,
37 tunnel, or trestle which is owned by a municipal corporation or

1 political subdivision of the state or by the United States and which is
2 used or to be used primarily for foot or vehicular traffic including
3 mass transportation vehicles of any kind.

4 (9) The term shall also not include sales of chemical sprays or
5 washes to persons for the purpose of postharvest treatment of fruit for
6 the prevention of scald, fungus, mold, or decay, nor shall it include
7 sales of feed, seed, seedlings, fertilizer, agents for enhanced
8 pollination including insects such as bees, and spray materials to:

9 (a) Persons who participate in the federal conservation reserve
10 program, the environmental quality incentives program, the wetlands
11 reserve program, and the wildlife habitat incentives program, or their
12 successors administered by the United States department of agriculture;

13 (b) farmers for the purpose of producing for sale any agricultural
14 product; and (c) farmers acting under cooperative habitat development
15 or access contracts with an organization exempt from federal income tax
16 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
17 fish and wildlife to produce or improve wildlife habitat on land that
18 the farmer owns or leases.

19 (10) The term shall not include the sale of or charge made for
20 labor and services rendered in respect to the constructing, repairing,
21 decorating, or improving of new or existing buildings or other
22 structures under, upon, or above real property of or for the United
23 States, any instrumentality thereof, or a county or city housing
24 authority created pursuant to chapter 35.82 RCW, including the
25 installing, or attaching of any article of tangible personal property
26 therein or thereto, whether or not such personal property becomes a
27 part of the realty by virtue of installation. Nor shall the term
28 include the sale of services or charges made for the clearing of land
29 and the moving of earth of or for the United States, any
30 instrumentality thereof, or a county or city housing authority. Nor
31 shall the term include the sale of services or charges made for
32 cleaning up for the United States, or its instrumentalities,
33 radioactive waste and other byproducts of weapons production and
34 nuclear research and development.

35 (11) The term shall not include the sale of or charge made for
36 labor, services, or tangible personal property pursuant to agreements
37 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the
2 labor, services, or tangible personal property, and a transit agency,
3 as defined in RCW 81.104.015, performs the labor or services.

4 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2006.

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